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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-192426

DATE: September 18, 1978

MATTER OF: Somervell & Associates, Ltd.

DIGEST:

Request for reconsideration of decision holding untimely protest which was hand-delivered to GAO 1 minute after bid opening is denied since reasons given for late filing were within protester's control and protester should have anticipated possibility of minor delays which allegedly occurred after its messenger arrived at GAO building.

Somervell & Associates, Ltd., has requested reconsideration of our decision in Somervell & Associates, Ltd., B-192426, August 18, 1978, in which we declined to consider its protest because of untimeliness.

Somervell & Associates protested against numerous ambiguities and improprieties allegedly contained in solicitation No. NTSB-78004, issued on June 1, 1978, by the National Transportation Safety Board. Bid opening took place at 2 p.m. on July 13, 1978, but the initial letter of protest was not hand-delivered to our Office until 2:01 p.m. on July 18, 1978. We declined to consider the merits of the protest because the bases of the protest were apparent from the solicitation and we found the protest to have been untimely filed under section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1978), which requires that a protest alleging improprieties in an invitation for bids be filed prior to bid opening.

Somervell & Associates filed a request for reconsideration on August 23, 1978, arguing that: (1) the initial protest letter of July 18, 1978, could not have been submitted earlier because the contracting officer did not respond to some of the protester's inquiries until July 17, 1978, and (2) the protest letter had to be hand-delivered due to an impending

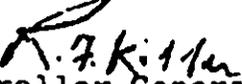
postal strike, and it was delivered before 2 p.m. on July 18, 1978, even though the General Accounting Office (GAO) staff member did not time-stamp it until 2:01 p.m. The protester submitted an affidavit from its employee alleging that he arrived at the GAO Building at 1:50 p.m., but had trouble locating the Bid Protest Unit. Furthermore, the affidavit alleges that the employee arrived at the Bid Protest Unit 2 or 3 minutes before 2 p.m., but that the GAO staff member there was engaged in a telephone conversation and, therefore, did not time-stamp the protest letter until 2:01 p.m.

We have examined the new arguments and supporting evidence submitted by the protester with its request for reconsideration, but remain of the opinion that the protest was untimely filed. One of our purposes in reviewing bid protests is to identify material deficiencies contained in invitations for bids prior to bid opening. In this manner, unnecessary exposure of bids is avoided and the integrity of the competitive bid system is maintained. Accordingly, section 20.2(b)(1) of our Bid Protest Procedures requires that a protest be filed prior to bid opening. A protest is "filed" with our Office at the time of receipt. Plattsburgh Laundry and Dry Cleaning Corp.; Nu Art Cleaners Laundry, B-180320, July 15, 1974, 74-2 CPD 27; 4 C.F.R. § 20.2(b)(3) (1978). The only documented evidence of receipt in the present case is the time/date stamp on the protest letter which indicates receipt at 2:01 p.m. on July 18, 1978.

The reasons given by the protester for waiting until the last possible moment to file a protest are not convincing. The solicitation was issued on June 1, 1978, and there were approximately 6 weeks in which to protest in a timely manner. This could have been accomplished by the protester even though it was awaiting reply from the contracting officer on its inquiries. Secondly, the impending postal strike did not materialize before the protest was filed. Most importantly, however, the protester is responsible for making sure that its protest is filed in a timely manner. The fact that the messenger was in the GAO Building looking for the appropriate place to file does not alter the fact that the protest was filed late. Delays of a few minutes in processing incoming mail and in locating offices are to be anticipated by protesters, and protesters should ensure that enough time is allowed to assure timely filing in spite of minor delays.

Moreover, although section 20.2(c) of our Bid Protest Procedures, 4 C.F.R. § 20.2(c) (1978), provides an exception to the timeliness rules where "good cause" is shown, we have held that "good cause" generally refers to some compelling reason beyond the protester's control which prevented timely filing. 52 Comp. Gen. 20 (1972). In the present case, the reasons given for the untimely filing were within the protester's control and, therefore, do not fit within the "good cause" exception.

Accordingly, our decision in B-192426, August 18, 1978, is affirmed.


Deputy Comptroller General
of the United States